IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

RCRev..No. 106 OF 2007

RCA.21/2006 OF THE RENT CONTROL APPELLATE AUTHORITY, ,KOZHIKODE
RCP.48/2004 OF THE RENT CONTROL COURT, KOYILANDY

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REVN. PETITIONER/1ST APPELLANT/1ST RESPONDENT

NADUKKANDY MEETHAL GOVINDAN,
AGED 57 YEARS, S/O. CHATHU, AGRICULTURIST,
KEEPPADAMKANDY HOUSE, BLOCK ROAD,
OLD MANHAPPALAM, BALUSSERY AMSOM, DESOM,
KOYILANDY TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

RESPONDENTS: RESPONDENT/PETITIONER

C.T.SAJEEVAN, AGED 49 YEARS,
S/O. SUKUMARAN, DRIVER, KERALA POLICE,
CHIRAYIL THEKKAYIL HOUSE, NANMANDA AMSOM,
DESOM, KOZHIKODE TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 22.3.2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

R.C.R. NO. 106 OF 2007

DATED THIS, THE 13TH DAY OF APRIL, 2007.

O R D E R

Raman, J.

The tenant, who is faced with an order of eviction, passed under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, is the revision petitioner herein.

2. The tenanted premises is a shop room where the revision petitioner is running a fruits stall. Petition schedule premises was entrusted to him in 1980 by the father of the respondent/landlord. While so, after the death of the father, who was the original landlord, the respondent herein, as legal heir, became the owner of the tenanted premises by way of a partition effected between the legal heirs of the original landlord, in 1994. Subsequently, there was also an enhancement in the rate of rent and the respondent, after issuing notice sought eviction of the petitioner herein on the ground of sub-lease as well as on the ground of bona fide need. The sub lease having found against, what is sustained is only the order of eviction under Section 11(3) of the Act.

3. The claim as regards the bona fide need alleged in the petition was that the respondent's son, who was examined as PW.2 in the case, has no independent source of income or any job and so he wants to start a business. The claim was resisted by the revision petitioner herein inter alia contending that PW.2 had no experience to conduct the business, that the respondent's father had earlier filed R.C.P. 57/1983 which however was not successful and it was later that after his death, based on a partition deed, the present rent control petition was filed, alleging bona fide need, which was only a ruse for eviction, that soon after the partition, the respondent/landlord issued a notice seeking eviction of the premises alleging different purpose which was refuted by the revision petitioner, by sending suitable reply and thereafter, the respondent did not pursue his claim by filing any petition for eviction, that thereafter, the landlord wanted a huge amount by way of rent, to which the petitioner was not amenable, that the room on the eastern side of the petition schedule room was vacant at the time of partition, but in stead of allotting that room to the respondent/landlord, the room in question was allotted to him with a view to seek eviction of the petitioner from there and hence the petition is bereft of bona fides.

4. The evidence in the case consist of oral testimony of PWs 1 and 2

and Exts. A1 to A6 on the side of the landlord and the oral testimony of RWs 1 and 2 and Exts. B1 to B4 series, on the side of the respondent The Commissioner's report was also marked as Ext.C1.

5. The Rent Control Court ordered eviction under Section 11(3) and 11(4)(i) of the Kerala Buildings (Lease & Rent Control) Act. On appeal, the finding under Section 11(4) (i) was vacated but the finding under Section 11(3) of the Act was confirmed.

6. The short question, therefore, arises for consideration is as to whether the concurrent findings on the bona fide need rendered by the courts below call for any interference and whether the orders suffer from any illegality, impropriety or irregularity, within the meaning of Section 20 of the Kerala Buildings(Lease & Rent Control) Act.

7. The oral testimony of PWs 1 and 2 supported the contention of the landlord regarding the bona fide need alleged in the rent control petition. According to them, PW.2, Nikhil, the son of the rent control petitioner, wanted to start a business in the petition schedule room and he has no source of income and he is unemployed. He has the requisite experience and the landlord - the father is ready to help him financially. The revision petitioner/tenant, on the other hand, would contend that the land lord's son

has no sufficient experience in conducting any business, that they are rich, they have got immovable properties and earning good income and there is no need for them to start any business in the petition schedule premises. The previous litigation by the erstwhile landlord was also projected to contend against the bona fide need alleged.

8. As per the evidence of the landlord PW.1, his son PW.2 was working in a stationary shop and has gained sufficient experience for the last one year. PW.2 also gave evidence in support thereof. But the Rent Control Court found that the contention regarding previous experience possessed by PW.2 was not sufficiently proved. However, the absence of such experience may not be a factor in the matter of considering the bona fide need as alleged. As already held by this Court in **Komalam v. Mohammed (**2002(1) KLT 284) the absence of any experience by itself is not a ground nor is it relevant in deciding the bona fide need and what is to be considered is the overall evidence in the case and the objective assessment of the same as to whether the landlord has established his bona fide need in contra distinction to a mere desire to start a business. The mere fact that the landlord has got some landed properties and generating some income does not preclude him, if he thought that his son who is

unemployed, should be supported to start a business of his own and to earn a living by himself. It may be true that the landlord's father had sought to evict the petitioner herein by an earlier proceeding. But the fact that such proceedings ended in dismissal of his case cannot by itself a reason to hold that, after several years of the earlier litigation by his father, if he bona fide needed the building for starting a business for his son, the same could be held to be a mere desire or ruse to evict the revision petitioner. It must be noticed that the respondent became the landlord of the building only in the year 1994, that too, by way of partition of the family properties among the legal heirs after the death of the father. Earlier, the rent control petition itself was filed in 1983 and it was only in 1994 that the respondent's father died - ten years after the earlier litigation. It is only after effecting partition when the petition schedule building happened to be allotted to the share of the landlord and when his son needed the premises for starting a business that the present petition was filed. The time gap between the earlier eviction petition and the present petition, the change of circumstances as a result of the death of the father and the partition effected in the family property etc. will clearly show that the present petition and the bona fide need as pleaded cannot be successfully resisted by the

tenant merely on the ground that the present landlord's father had fought a litigation several years prior to the present petition. The further contention that a vacant adjoining room ought to have been allotted to the share of the present landlord in which case, the tenanted premises would have been allotted to the share of some other heir of the deceased, is absolutely irrelevant and out of context. It is for the legal heirs to decide as to which of the properties is to be allotted to each sharer and what prompted the allotment of the tenanted premises to the landlord cannot be a guess work on the part of the tenant to say that the tenanted premises was purposefully included in the share of the present landlord. The other contention that an earlier notice, Ext.B1 was issued demanding vacant possession of the premises for starting a textile shop and so the present demand is bereft of bona fides cannot be accepted as a reason to suspect the bona fide need now projected by the landlord. As rightly found by the appellate court, Ext.B1 notice was issued at a time when the landlord was temporarily employed and at that time he thought of starting a textile business. He has given evidence that because he was an Ex-service man he was waiting for some employment from the State Government and so he did not pursue his earlier demand in Ext.B1. Ext.A6 order of the Commandant, MSP,

Malappuram would show that he was absorbed in the Police Department as a driver, later. It is also in evidence that the respondent had registered his name for employment in the year 1993 and he was advised in the year 1995. Therefore, the version of PW.1 the landlord that he was anticipating some job from the State Government as an Ex-service man is a reason not to pursue Ext. B1 notice was accepted by the court below. We do not find any reason to hold that the conclusion reached by the court below is in any way erroneous. The court below, in this regard, having appreciated the evidence on record, we do not think that this Court sould re-appreciate the same to come to a different conclusion, nor is there any materials to do so. The appellate court also found that there is no ill-motive in allotting the petition schedule building to the share of the respondent/landlord. Nothing is brought out in evidence to show that the allotment of petition schedule room as the share of the landlord herein was in any way with an intention of evicting the petitioner herein. As already stated above, it is for the co-owners to decide as to which portion of the property is to be allotted and to whom. The fact that PW.2 was not having any job or occupation and he wanted to have an independent source of income is nothing but legitimate and there is nothing unnatural in the father desiring his son earns his own

livelihood by starting a business in the petition schedule premises. Further, at the time when Ext. B1 notice was issued PW.2 was aged only nine years. Therefore, the landlord could not have felt any need at that time to start a business for his son. When he was examined in this case as PW.2, he was aged 20 years. and and when he wanted to start a business then alone the landlord demanded vacant possession of the building. This only shows that the bona fide need alleged is not a ruse for eviction.

9. It must be remembered that even though the landlord issued Ext. B1 notice earlier, he did not file any petition seeking eviction at that time as he was expecting an employment in the State Government. Only after his son became major and when he remained unemployed the need arose for starting a business for his own. Therefore, the finding of the court below that the need as put forth by the landlord is bona fide cannot be assailed on any valid ground.

10. As regards the benefit of the second proviso to Section 11(3) it was admitted on behalf of RW.1 that he had large extent of properties and generating agricultural income therefrom. No materials were produced to show that the business carrying on in the tenanted premises is the sole income for the livelihood of the tenant and there is no serious attack against

the said finding by the courts below as regards the benefit of the second proviso to Section 11(3). Further, the tenant did not adduce any evidence to show that there are no alternate rooms available for conducting his business.

11. In the result, we confirm the order of eviction passed by the Rent Control Court as affirmed by the Appellate Court and dismiss the revision petition.

12. At this stage, the learned counsel for the revision petitioner sought for a reasonable time to surrender vacant possession of the petition schedule building. We heard the learned counsel appearing for the respondent also.

In the facts and circumstances, we direct that the execution, if any, pursuant to the orders passed by the court below, will stand deferred for a period of three months so as to enable the revision petitioner to surrender vacant possession of the petition schedule premises. However, this shall be on condition that the revision petitioner shall file an undertaking before the court below on or before 30.5.2007, along with the entire arrears of rent, if any, as on today, to the effect that he shall continue to pay an amount equivalent to the monthly rent by way of compensation for use and

occupation until vacant possession is given, that he shall not induct any third parties and that he shall give vacant possession of the premises on or before 12.7.2007. If he commits default in complying with any one of these conditions, the landlord will be at liberty to move the court below with the execution proceedings.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-